RECENT CASES

ADMIRALTY—AFFREIGHTMENT CONTRACTS—INCOMPLETE VOYAGE.—NATIONAL STEAM NAVIGATION CO. v. INTERNATIONAL PAPER CO. (MARCH 13, 1917) C. C. A. (2D. CIR.) OCT. TERM, 1916, No. 204.—The respondent entered into an agreement with the libellant to ship paper to Greece on the latter's steamer and to prepay the freight in New York. The respondent having filled out the bills of lading, delivered them to the libellant for its signature. The ship sailed before the respondent took up the bills of lading and paid the freight. When one day out, fire was discovered and the ship and cargo became a total loss. The respondent, having refused to pay the freight, this libel was filed to recover the same by virtue of certain provisions in the bill of lading which stipulated that the prepaid freight was "wholly due upon receipt of the goods into the custody" of the libellant, or on the signing of the bills of lading, "the ship lost or not lost." *Held,* that the libellant could recover the full amount of the freight.

The American courts have not followed the law of England to the effect that freight prepaid by agreement cannot be recovered by the shipper and can be collected by the ship-owner in case of the loss of the goods, the rule being set out in the leading case of *Byrne v. Schiller* (1871) 1 Asp. Mar. L. Cas. 111. On the contrary, the general principle of our maritime law is that a contract for the conveyance of goods on a voyage is an entire contract, and unless it be completely performed by the delivery of the goods at the place of destination, no freight whatever is due. *Mitsui et al. v. St. Paul Fire & Marine Ins. Co.* (1913) 202 Fed. 26; cf. Sieveking, *The German Law of Carriage of Goods by Sea,* p. 293. For this reason, freight paid in advance can be recovered in the event of the non-completion of the voyage. *The Schooner Arthur B.* (1901) 1 Alaska, 403; *Chase v. Alliance Ins. Co.* (1864) 9 Allen (Mass.) 311. Exceptions to this rule may be made by mutual consent, and such an agreement may act as a waiver of any right of recovery for the uncompleted voyage. *The Tornado* (1882) 108 U. S. 342; *Griggs v. Austin* (1825) 3 Pick. (Mass.) 20. It seems to follow that the parties may stipulate that the freight shall be prepaid and become wholly due without right of recovery in the case of the loss of the ship, thus in effect, by agreement incorporating the English doctrine. *Portland Flouring Mills Co. v. British & F. M. Ins. Co.* (1904) 130 Fed. 860. And by "wholly due" would be meant a present liability to pay or "payable." *Yocum Admr. v. Allen* (1898) 58 Oh. St. 280; *Cutter v. Perkins* (1859) 47 Me. 557. The respondent's duty became affixed, therefore, prior to the loss of the ship and cargo.

A. S. B.

CARRIERS—CARRIAGE OF GOODS—LIMITATION OF LIABILITY.—HEUMAN v. M. H. POWERS CO. (1916) 162 N. Y. S. 590.—The plaintiff made a contract with the defendant, a general truckman, to remove some household effects. The liability of the truckman was fixed at $50 for the loss of any